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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,362	10/21/2003	Edward Goldberg	287/11	4249
27538	7590	02/17/2005	EXAMINER	
KAPLAN & GILMAN , L.L.P. 900 ROUTE 9 NORTH WOODBRIDGE, NJ 07095			ACKUN, JACOB K	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/690,362	GOLDBERG, EDWARD
	Examiner	Art Unit
	Jacob K. Ackun Jr.	3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-41 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____. |

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 and 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 and several claims dependent thereon are indefinite because they are vague as to whether they are drawn to the subcombination of the body only or to the combination of the body and at least one tool. Taking claim 1 as an example, the phrase "for storing at least one tool" in line 2 is considered to clearly indicate that no tool is claimed. On the other hand the size of the opening (a feature that clearly appears to be claimed) is made expressly dependent on the tool (see lines 6-7 of claim 1). Additionally, dependent claims such as claim 2 directly recite further structural limitations on the tool.

Claims 19-22 are indefinite because it is not clear whether the applicant's intention is to invoke 35 USC 112 sixth paragraph or not. The term "means" is used in several instances without corresponding functional language.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown Jr, Weiss et al or Barber. With regard to claim 1 no tool is presumed to be recited, in order that the claim be given its broadest reasonable interpretation (note the indefiniteness rejection above). Each of

the references appears to show devices having a body portion comprising an outside shell and at least one carabiner attachment. For example the body portion of each of the Weiss embodiments is considered to be inherently capable of use to store at least one tool or a plurality of tools therein as functionally recited (according to the interpretation given by the examiner) in the claims. In fact at least the flashlight embodiment has a tool (lightbulb or batteries) therein, although as noted immediately above this is not required in the claim. With regard to claim 18 the word "screwdriver" is only recited in the claim preamble. The claim is unpatentable over Weiss since the reference meets all of the limitations recited in the claim. Most of the cited carabiners can be divided into three legs. For example, the claimed third leg reads on the portion at 92" in Weiss fig 15. Brown and Barber are applied in similar fashion. Either elements 36 or 64 (Fig 5c) of Brown meet the requirements for a carabineer assembly.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, Jr., Jones or Lin in view of Weiss et al., Barber or applicants own disclosure of the prior art. Jones or Lin have most of the elements of the claims but lack a carabineer. Brown is also applied in this ground of rejection to the extent the applicant may argue that Brown does not disclose a carabineer. The secondary references including the applicant's own admission each make clear that it is conventional to attach a carabineer to a variety of small hand tools to increase their utility, such as by facilitating their attachment to something or someone. It would have been

obvious in view of any one of the note secondary references to attach a carabineer having the claimed structure to the devices of either Lin, Jones or Brown (for example at either 36 or 64 of Brown), in order to facilitate the attachment of these devices elsewhere, thereby making the devices more useful. Note that Lin clearly teaches a screwdriver and tape measure, and that the tape measure of Jones meets the requirement for a tool.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571)272-4485. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jacob K. Ackun Jr.
Primary Examiner
Art Unit 3723

J.A.